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Jeff Frithsen/DC/USEPA/US

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To Rebecca Aicher, Heather Dean, Joe Ebersole, Sheila Eckman, Jeff Frithsen, Michael Kravitz, Phil North, Kate Schofield, Glenn Suter, Jason Todd, Jim Wigington, "Blair, Gregory", "DANIEL RINELLA", jrice, sseville, Barbara Butler, Bob Seal, Chip McConnaha, Cindi Godsey, David Bauer, Greg Summers, Jenny Thomas, Judy Smith, Ken Rock, Lorraine Edmond, Mark Matthies, Marty Bozeman, Michael Wiedmer, Palmer Hough, Rachel Fertik, Rick Parkin, Tami Fordham

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Subject Fw: NEWS UPDATES: Issa steps up probe of EPA watershed study (Greenwire)

Just FYI.....

## The EPA's Pebble Beaching

*Rewriting the Clean Water Act to kill an Alaska mining project.*

<http://online.wsj.com/article/SB10000872396390443989204577603311958126108.html>

Lisa Jackson's Environmental Protection Agency keeps losing in court, but that doesn't mean she's at all deterred from expanding her authority. Witness her agency's assault on an Alaska mining project before the developers have even submitted their plans for government approval.

The Pebble Partnership—a joint effort by Anglo-American and Northern Dynasty Minerals—has spent a decade and \$132 million exploring the potential to dig North America's largest copper and gold mine on state-owned land in southwest Alaska. The deposit is vast and could be among the world's largest supplies of both minerals, creating upwards of 1,000 high-paying jobs.

The Partnership is planning to apply for permits later this year, and in the normal course this would trigger extensive state and federal reviews. The federal review is done by the U.S. Army Corps of Engineers, which under the Clean Water Act has primary authority for deciding whether to issue permits for wetlands. The EPA can later review and revoke the Corps-issued permits with cause.

And there is the regulatory rub. The EPA has long chafed at this secondary role in permitting, though it has learned to use its veto threat to extract concessions from developers along the way. In the Pebble case, however, Mrs. Jackson is moving to supersede the Army Corps and make the EPA the only regulator, notwithstanding the plain language of the Clean Water Act.

Specifically, the EPA launched a preliminary study of what a mine would do to the

Bristol Bay watershed, a spawning ground for sockeye salmon. Our sources say the EPA has never before undertaken such an exercise, for the simple reason that it is impossible to determine the environmental impact of a project before it has been proposed.

But Mrs. Jackson's EPA is nothing if not creative. The agency invented a hypothetical Pebble mine, with its own engineering standards that industry claims are antiquated and show limited concern for the environment. Voila, the EPA found that its nonexistent mine would harm the watershed. The clear message: Don't even bother submitting a proposal, because even if it passes Army Corps review, the EPA will kill it.

The problem is that Mrs. Jackson's study has been roundly ridiculed—not least by the EPA's own peer-review experts. In a public meeting in August, the 12 peer reviewers lambasted the study for its rushed, "unsatisfactory" and "hypothetical" nature, and for numerous errors. One reviewer, University of Idaho hydrology expert Charles Slaughter, called some of the study's key parts "pure hogwash."

The EPA's response? It may go even further and veto the Pebble mine before the Army Corps does its assessment. Asked specifically by House Oversight Chairman Darrell Issa if the EPA is contemplating a pre-emptive veto, EPA Associate Administrator Arvin Ganesan didn't deny it in a May letter. He said the statute gives Mrs. Jackson "broad authority" to prohibit a project "whenever" necessary—including "prior to the submittal of an application."

The courts are unlikely to agree. This spring a federal court in D.C. slammed the EPA for revoking an Army Corps permit four years after it was issued for a West Virginia mining project. District Judge Amy Berman Jackson noted that the EPA's view that it could "unilaterally modify or revoke" a Corps permit "at any time" was a "stunning power for an agency to arrogate to itself when there is absolutely no mention of it in the statute."

The EPA's actions with Pebble are no less stunning and are likely to be economically damaging. The Brattle Group, a consulting firm, estimates that some \$220 billion in U.S. investments—resource extraction, farming, energy, manufacturing and more—go through the Corps permitting process. Were the EPA to seize power to wall off entire areas to development—before projects are even proposed—much of that investment would go outside the U.S.

The EPA's power grab is an insult to the Army Corps and especially to the state of Alaska, which has every reason to evaluate the Pebble project carefully so it doesn't damage the state's lucrative fishing and tourism industries.

Under Mrs. Jackson, the EPA has become less a regulator following the law and more an ideological vanguard that will push its limits-to-growth agenda as long and as far as the courts and Congress allow. Watch out in a second Obama term.

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